IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 349 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PRAKASHBHAI CHHANABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 349 of 2001
MS SUBHADRA G PATEL for Petitioner No. 1
Mr. H.L. Jani, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/07/2001

ORAL JUDGEMENT

Heard learned advocate Ms. Patel for the petitioner and Mr. Jani, learned AGP for the respondent State. In this petition, the petitioner has challenged the impugned order of detention dated 24.11.2000 passed by the detaining authority - District Magistrate, Valsad

under section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("the PASA Act" for short). The grounds of detention have been communicated to the petitioner under section 9(1) of the PASA Act and the petitioner has been detained at Central Prisons, Sabarmati, Ahmedabad as Class II Detenu. As per the grounds of detention communicated to the petitioner, two offences were registered against the petitioner at Atul Police Station being III CR No. 35 of 2000 and the second offence is registered before the Valsad Prohibition Station being CR No. 463 of 2000 under the provisions of the Bombay Prohibition Act. The As per the grounds of detention, chargesheet has been filed in the court and the said cases are pending before the Court. In this petition, the State Government has filed the affidavit in reply but no reply has been filed by the detaining authority. The petitioner has been considered to be the bootlegger as defined under section 2(b) of the PASA Act.

2. Learned advocate Ms. Patel has raised various contentions while challenging the impugned order of detention. However, according to her, one contention is enough to set aside the impugned order of detention. She has submitted that the petitioner has been branded as a bootlegger as defined under section 2(b) of the PASA Act. According to her, there was delay in passing the impugned order of detention from the date of the last offence registered against the petitioner namely CR No. 463 of 2000 which was registered against the petitioner on 6.10.2000 whereas the impugned order of detention has been passed by the detaining authority on 24.11.2000. Specific contention to that effect has been raised by the petitioner in para 10 of the memo of petition. She has submitted that the delay in passing the order of detention has not been explained by the detaining authority by filing the reply and the State also has not explained the situation in the reply filed by it. Therefore, according to her, between 6th October, 2000 and 24th November, 2000, there was no offence registered or unregistered against the petitioner and, therefore, there was no immediate proximity or nexus which would require immediate detention of the petitioner for the maintenance of public order. She has, therefore, submitted that the impugned order of detention is required to be quashed and set aside on this ground alone. She has relied upon the decision of this Court reported in 1997 (1) GLH page 381.

Learned AGP Mr. HL Jani has submitted that looking to the activities which were carried out by the petitioner and also in view of the registration of two offences against the petitioner as per the grounds of detention, there were compelling circumstances and there was no other option with the detaining authority except to detain him under the PASA Act and, therefore, the detaining authority has, after considering all the relevant facts and material on record, passed the impugned order of detention to prevent the petitioner from carrying on such illegal anti social activities which were disturbing the maintenance of public order. He has, therefore, submitted that the detaining authority has passed legal and valid order and, therefore, this court should not interfere with the same. He has submitted that this petition is required to be dismissed.

I have considered the submissions made by both the learned advocates and looking to the undisputed facts which were on record, last offence registered against the petitioner is dated 6.10.2000 and the impugned order of detention has been passed on 24.11.2000. This delay in passing the impugned order of detention has vitiated the order of detention. In view of these facts, delay in passing the impugned order of detention which has remained unexplained has vitiated the order of detention. The State Government has filed the affidavit in reply but the detaining authority has not filed the reply and, thus, the delay occurred in passing of the impugned order of detention has remained unexplained.

In light of these facts of the present case, it would be appropriate to make reference of the decision of this Court in case of Elesh Nandubhai Patel versus Commissioner of Police reported in 1997 (1) GLH 381. Para 21 of the said decision reads as under:

"In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 5, 1996 i.e. after a delay of five months and fifteen days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October, 1`996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some

substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993 (2) Suppli. SCC 61."

In view of the observations made by this Court in the aforesaid decision and also considering the undisputed facts which are on record that more than four month have passed from the date of last registered offence and that delay has remained unexplained by the detaining authority, I am of the view that the order of detention is required to be quashed and set aside.

For the reasons recorded hereinabove, the petition succeeds and the same is allowed. The order of detention dated 24.11.2000 is vitiated and resulted to quash and set aside. The detenu Prakashbhai Chhanabhai Patel who has been detained at the the Central Prisons, Sabarmati, Ahmedabad be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is Permitted.

3.7.2001. (H.K. Rathod,J.)

Vyas